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(2)

Division Bench (Criminal)

IN THE HIGH COURT OF JUDICATURE AT JABALPUR (M.P)

Criminal Appeal No. 3593 /1999

12625

Appellant — Sadhelal, S/o Amoli Satnami,
Aged about 27 years,
R/o Village Khursi, P.S. Lalpur
District Bilaspur (M.P.).

VERSUS

Respondents — State of M.P. Through P.S. Lalpur
District Bilaspur (M.P.).

CRIMINAL APPEAL UNDER SECTION 374 (2) OF THE CODE OF CRIMINAL PROCEDURE.

HIGH COURT OF JUDICATURE AT BILASPUR, CHHATTISGARH

Criminal Appeal Nos. 2592/99 & 2593/99

Sadhelal

Vs.

State of Madhya Pradesh

JUDGEMENT FOR CONSIDERATION

Sd/-
Dhirendra Mishra
Judge

HON'BLE SHRI L.C.BHADOO ,J.

I agree

Sd/-
L.C. BHADOO
Judge

POST FOR JUDGMENT ON 1st MARCH 2006

Sd/-
DHIRENDRA MISHRA
Judge

(79)

DIVISION BENCH: HON'BLE SHRI L.C.BHADOO
& HON'BLE SHRI DHIRENDRA MISHRA, JJ.

Cr.A. NOs. 2592 of 1999 & 2593 of 1999

Appellant	:	Sadhelal
		Vs.
Respondent	:	State of Madhya Pradesh

Miss Sharmila Singhai, learned counsel for the appellant.
Shri Akhil Mishra, learned Panel Lawyer for the State/respondent.

JUDGMENT
(01.03.2006)

Dhirendra Mishra, J

Criminal appeal No. 2592/99 and criminal appeal No. 2593/99 against the impugned judgment dated 06th August 1999 passed by learned Additional Sessions Judge, Mungeli, in S.T.No.105/97 and S.T.No. 106/97 in relation to murder of Sillu and Aghaniya Bai respectively are being disposed of by this common judgment. Accused/appellant Sadhelal by the impugned judgment has been convicted u/s 302 of the IPC for causing homicidal death of Sillu, u/s 307 of the IPC for attempting to cause death of Samtiya Bai and sentenced him to undergo life imprisonment with fine of Rs.1000/-, in default thereof to further undergo R.I. for six months u/s 302 of the IPC and five years R.I. with fine of Rs.1000/-, in default thereof to further undergo R.I. for six months u/s 307 of the IPC in S.T.No. 105/97. The accused/appellant has been convicted u/s 302 of the IPC for causing death of Aghaniya Bai and sentenced to undergo life imprisonment with fine of Rs.1,000/-, in default of payment, to further under R.I. for six months R.I. All the substantive sentences were directed to run concurrently.

2. Case of the prosecution, in nutshell, is that on 09.01.1997 at about 11.00 Samatiya Bai - the complainant, her husband Sillu, her mother-in-law Aghaniya Bai and labourer Titri Bai were casting bricks in village Khursi. Appellant Sadhelal who was also casting bricks there in the vicinity raised a

dispute with Sillu for the reason that why he was casting brick before his place and picked up an axe, chased Sillu, Samatiya Bai and Aghaniya Bai who started running. In the meanwhile accused Pundas and his son Sahdev picked up *kalari* (an agricultural implement to tackle paddy straw) from the thrashing field and assaulted Samatiya Bai, her husband Sillu and her mother-in-law Aghaniya Bai resulting in death of Sillu and Aghaniya Bai and grievous injury to Samatiya Bai. On the basis of the report lodged by complainant Parmanand Cr.No. 03/97 under Sections 302, 307/34 of the IPC was registered vide Ex.P/25 in S.T.No. 105/97 and Cr.No. 04/97 under Section 302 of the IPC was registered vide Ex.P/27 in S.T.No.106/97 against the accused/appellant Sadhelal and other co-accused Pundas and Sahdev. After registering the offences investigating officer Shri A.P.Tiwari (PW-21 in S.T.No. 105/97 and PW-13 in S.T.No.106/97)) proceeded for scene of occurrence and performed inquest of Ex.P/9 over the dead body of Sillu and inquest of Ex.P/11 over the dead body of Aghaniya Bai, after due notice to the Panchas. Dead body of Sillu was sent for postmortem examination to Primary Health Centre Mungeli vide Ex.P/27 where Dr. N.S.Chandel (PW-20) conducted postmortem over the dead body of Sillu and submitted his report vide Ex.P/21. On external examination he found one incised wound on the back of the neck behind the right mastoid bone; muscles, second vertebra and spinal cord cut; incised wound on the right side of the neck starting from sternomastile muscles up to back portion in the size of 5 cm x 2 cm x 3 cm; cervical vertebra cut and broken; spinal cord and its membrane cut, presence of undigested food; and the doctor has opined that the above injuries were caused by heavy sharp edged weapon and the same were within 24 hours. Cause of death was opined to be the spinal cord injury and the same was homicidal in nature. On examination of injured Samtiya Bai the doctor found one incised wound over the right parietal region in the size of 8 cm x 2 cm up to bone deep and the bone was cut. The doctor has opined that the injuries present over Samtiya Bai were caused by heavy sharp edged weapon and the same were grievous in nature. He referred Samtiya Bai for X-ray examination to District Hospital, Bilaspur and the X-ray report of Samtiya Bai is Ex.P/33-A. The report of Dr. S.Chatterjee, Radiologist (PW-27), is Ex.P/33

who found fracture of the right parietal bone of Samtiya Bai . Sari and blouse of Samtiya Bai were seized vide Ex.P/2, packet containing bloodstained clothing of the deceased Aghaniya Bai sent by the doctor performing autopsy was seized vide Ex.P/6 and packet containing bloodstained clothing of the deceased Sillu was seized vide Ex.P/7. Plain soil and bloodstained soil from the place near the dead body of deceased Sillu was seized vide Ex.P/13 and plain soil and bloodstained soil from the place near the dead body of Aghaniya Bai was seized vide Ex.P/14. Two iron buckets and three mold of bricks were seized from the spot vide Ex.P/12. In pursuance to the memorandum (Ex.P/15) of accused/appellant Sadhelal bloodstained *Tangia* was seized vide Ex.P/17 and in pursuance to the memorandum of Ex.P/16 of accused Sahdev, iron *kalari* fitted in a bamboo stick was seized vide Ex.P/18. One iron *kalari* fitted in a bamboo stick was seized from accused Pundas vide Ex.P/19. Bloodstained shirt and lungi of Sadhelal were seized vide Ex.P/20. Spot map (Ex.P/21) was got prepared by the Halka Patwari namely Umashankar Thakur (PW-15). The axe seized from Sadhelal was sent for examination to the Dr. N.S.Chandel who opined vide Ex.P/23 that the injury caused to Samtiya Bai could be caused by the axe in question and the injury over Samtiya Bai was grievous in nature and the same could cause death in the absence of timely treatment. The seized articles were sent for examination to the doctor who submitted his report Ex.P/24 and opined that bloodlike stains were present over the articles sent and recommended to obtain the opinion of the chemical analysts for confirmation. The seized articles were further sent for chemical examination to Forensic Science Laboratory, Sagar vide Ex.P/32.

3. The dead body of Aghaniya Bai was sent for postmortem to Primary Health Centre, Mungeli. Dr. N.S.Chandel (PW-12) after conducting postmortem over the dead body of Aghaniya Bai submitted his report in S.T.No.106/97 vide Ex.P/8. As per postmortem report the doctor found one incised wound over the left side of the neck starting from the angel of mandible bone which was extended up to mastoid bone; external jugular vein of neck cut; and incised wound over right parietal region bone deep. He

opined that the cause of death was shock due to excessive bleeding and the same was homicidal in nature.

4. After completion of the investigation charge sheets under Sections 302, 307/34 of the IPC in connection with Cr.No.03/97 and charge sheet under Section 302/34 of the IPC in connection with Cr.No.04/97 were filed in the Court of Judicial Magistrate First Class, Mungeli who in turn committed both the cases for trial to the Court of Sessions Judge, Bilaspur and learned Additional Sessions Judge, Mungeli received the same on transfer for trial. Charge under Sections 302/34 of the IPC for causing death of Sillu and 307/34 of the IPC for attempting to cause death of Samtiya Bai were framed against the appellant and other two accused persons in S.T.No. 105/97 and charge under Section 302 of the IPC for causing death of Aghaniya Bai was framed against the appellant and other two accused persons in S.T.No. 106/97. The accused persons abjured the guilt.

5. The prosecution in order to establish its cases examined as many as 24 witnesses in all in S.T.No. 105/97 and 23 witnesses in S.T.No. 106/97. Thereafter, statements under Section 313 of the Code of Criminal Procedure of the accused persons were recorded. The accused persons denied the circumstances appearing against them in the prosecution case and pleaded that they are innocent and have been falsely implicated in the crime. However, learned Additional Sessions Judge after hearing learned counsel for the parties acquitted co-accused Sahdev and Pundas of the charges levelled against them in both the cases and convicted the accused/appellant Sadhelal as mentioned above.

6. Homicidal death of deceased persons Sillu and Aghaniya Bai is not in dispute. Similarly, injuries present over Samtiya Bai are not in dispute. Even otherwise from the statement of injured witness Samtiya Bai and the statement of Dr. Chandel who performed autopsy over the dead body of Sillu and Aghaniya Bai and found injuries present on their person as described above, the homicidal death of Sillu and Aghaniya Bai is established.

7. Now the next question to be decided in these appeals is - whether the involvement of the appellant Sadhelal in causing death of Sillu and Aghaniya Bai and injuries to Samtiya Bai, has been established ?

8. To establish the involvement of the accused/appellant the prosecution has relied upon the statements of PW-2 Samtiya Bai, PW-6 Vitan Bai @ Sushila, and PW-8 Titri Bai who are eyewitnesses of the incident.

9. It is contended on behalf of the accused/appellant that the appellant and complainant are the poor persons who are engaged in the trade of manufacturing bricks and there was no enmity between the appellant and the deceased persons. It is further argued that the conduct of Samtiya Bai is unnatural inasmuch as she did not narrate the incident to any of the villagers and she being the wife and daughter-in-law of the deceased persons is a highly interested witness, therefore, before acting upon her statement it should be closely scrutinized. The prosecution has also failed to prove that the appellant caused death of the deceased persons intentionally as is evident from the evidence of Samtiya Bai who in paragraph -2 of her statement alleged that the appellant assaulted with the handle of axe and the incident allegedly occurred in the spur of moment, without premeditation, in the heat of passion as deceased Sillu catching hold of hand of his wife Munni Bai was dragging her. Though Samtiya Bai has denied this but PW-6 Bitan Bai in paragraph – 4 of her statement has admitted that Sillu caught hold of hand of Munni Bai, started dragging her and he was saying that he would outrage her modesty and Aghaniya Bai and Samtiya Bai were abusing, therefore with a view to release Munni Bai, Sadhelal assaulted the three. It is further contended that there was a scuffle between the deceased and the appellant as is evident from the statement of PW-2 Samtiya Bai who in paragraph – 8 of her statement admitted that there was a scuffle in the name of making bricks between Sadhelal and them. It is further contended that PW-6 in paragraph – 4 of his statement has also stated that during hot talks dispute deepened and Sillu assaulted Sadhelal by bricks, therefore, in the aforesaid circumstances, the defence of the appellant that he was entitled for exercising right of private defence, is established.

10. On the other hand, learned counsel for the State supported the impugned judgment of the trial Court.

11. We have heard learned counsel for the respective parties and perused the material available on record.

12. The case of the prosecution rests upon the statements of PW-2 Samtiya Bai, PW-6 Bitan Bai and PW-8 Titri Bai who are eyewitnesses to the incident. PW-2 Samtiya Bai who has sustained grievous injuries over her head in the same incident has stated that she, her husband Sillu and her mother-in-law Aghaniya Bai were making preparation for casting bricks and were pouring water in the soil and Titri Bai was assisting them. When they had just begun casting brick Sadhelal who was also making brick on the spot, forbade them from making brick in front of his house and destroyed the bricks made by them through his feet. Thereafter, Sadhelal started beating her husband, her mother-in-law and herself with the handle of axe and when they tried to run away from the spot, accused Sahdev and Punlal came there and started assaulting them by *kalari* and appellant Sadhelal started assaulting them by axe. All the three accused persons assaulted her on his head and her husband and her mother-in-law sustained grievous injuries over neck, as a result of which they fell down on the spot. The accused persons fled from the place of incident considering that they were dead. However, she was partly conscious and she informed the Kotwar in his home regarding the incident. Her husband and her mother-in-law died on the spot. She has further stated that she was taken by the police to the Primary Health Centre, Mungeli from where she was referred to Bilaspur hospital for X-ray. She was admitted in the hospital for nine days. In the cross-examination this witness has stood to her examination-in-chief. The submission of learned counsel for the accused/appellant is that the evidence of this witness cannot be believed for the reasons that she did not narrate the incident to any other villager and no independent witness has corroborated the evidence of this witness though the incident is of broad-day light and the same took place near the school. It is further argued that this witness has given exaggerated

account of the assault given by the accused persons to the deceased as the same is contradicted by the medical evidence which does not mention corresponding injuries over the person of the deceased or the person of Samtiya Bai and therefore, on this ground also this witness should be disbelieved.

13. PW-6 Bitan Bai has also corroborated the statement of Samtiya Bai so far as it relates to the part played by appellant Sadhelal as she has stated that there was some dispute between appellant Sadhelal and Sillu etc. in the name of place for casting bricks, as a result of which Sadhelal assaulted Sillu, his mother and his wife with axe. However, she did not corroborate the statement of Samtiya Bai so far as it relates to assault made by co-accused persons Sahdev and Punndas. Similarly, PW-8 Titri Bai has also corroborated the statement of Samtiya Bai with respect to assault given by Sadhelal to deceased Sillu by axe and also regarding the nature of dispute. The statement of Samtiya Bai further stands corroborated by the statement of Dr. Chandel who has performed autopsy and found injuries over the neck of Sillu and Aghaniya Bai and further found injuries over the right parietal region of PW-2 Samtiya Bai. The above statement is also duly corroborated by the radiologist Dr. Chatterjee who has found fracture of right parietal bone of Samtiya Bai. Though the bloodstained axe has been seized from the appellant on the basis of his memorandum and the same was sent for chemical examination to the Forensic Science Laboratory, however, the report of F.S.L. is not available on the record. Apart from the statements of the above witnesses the statement of Samtiya Bai (PW-2) is also corroborated by the statement of Nandlal – Kotwar, village - Mudia (PW-4) who has stated that immediately after the incident he reached the spot and found the dead bodies of Sillu and Aghaniya Bai lying there and there were injuries of axe over head of Samtiya Bai and when he asked Samtiya Bai, she stated that Sadhelal, Pundas and Sahdev had assaulted her husband, her mother-in-law and herself. PW-16 Vijlu – brother of Sillu, has also stated that on the date of incident Samtiya Bai informed him that the accused persons had killed his brother and his mother where they were casting bricks

and appellant Sadhelal assaulted them by axe and other accused assaulted them by *kalari* and she sustained injury over her head. The defence in cross-examination of the above witnesses has not been able to elicit anything to make their statements untrustworthy or unreliable.

14. Learned counsel for the accused/appellant submits that the incident occurred because the deceased Sillu was dragging the wife of the appellant Munni Bai with a view to outrage her modesty, therefore, the appellant exercising the right of private defence assaulted them. She places her reliance on the judgment reported in **2003 Cr.L.J. 53** in the matter of **Sekar alias Raja Sekharan Vs. State rep. by Inspector of Police, Tamil Nadu** and submits that the accused taking the plea of the right of private defence is not required to call evidence; he can establish his plea by reference to circumstances transpiring from the prosecution evidence itself.

15. Further relying upon the judgment reported in **(2003)2 S.C.C. 661** in the matter of **Rizan and another Vs. State of Chhattisgarh**, learned counsel for the appellant submits that the Court is free to consider the plea of private defence even if the accused has not taken the said plea, provided that the same is available to be considered from the material on record.

16. It is settled law that in appropriate cases if from the evidence available on record the Court is satisfied that the accused assaulted the victim while exercising his right of private defence, the right of private defence may be extended to the accused without accused taking the plea of right of private defence in his statement under Section 313 of the Cr.P.C. However, in order to find whether right of private defence is available or not, the injuries received by the accused, the imminence of threat to his safety, the injuries caused by the accused and the circumstances whether the accused had time to have recourse to public authorities, are all relevant factors to be considered. In the instant case, there is no evidence on record to suggest that the deceased persons were armed with weapons and they were attempting to make assault and there is also no evidence on record to show that the appellant sustained any injury in the process. So far as the defence

of the appellant that since Sillu had caught hold of hand of Munni Bai and was dragging her in order to outrage her modesty, the appellant assaulted him, is concerned, the alleged act attributed to Sillu does not accord right to the accused/appellant to cause injuries to Aghaniya Bai and Samtiya Bai who were unarmed at the time of incident. Therefore, in the aforesaid circumstances, we are of the considered opinion that no case of right of private defence is made out.

17. The next argument of learned counsel for the accused/appellant is that there is no motive with the appellant to commit the above offence and since the incident occurred in the spur of moment, in the heat of passion, on a sudden quarrel, it cannot be held that the appellant intentionally caused death of Sillu and Aghaniya Bai and injuries to Samtiya Bai and as such the Court below has committed illegality by convicting the appellant under Section 302 of the IPC and offence against the appellant does not travel beyond Section 304-II of the IPC.

18. So far as the above argument is concerned, we are not convinced by it as the intention of the appellant for committing the above offence can safely be gathered from the nature of weapon used for commission of the offence, portion of the body where assault was made and further from the manner in which the assault was made. In the instant case, the appellant has inflicted number of injuries on the person of Sillu, Aghaniya Bai and Samtiya Bai which left two persons dead and one injured, therefore, intention of the appellant for causing death of Sillu and Aghaniya Bai and attempting to cause death of Samtiya Bai has rightly been inferred by the Court below which does not call for any interference by this Court.

19. On the basis of aforesaid discussions, we are of the considered opinion that there is no illegality or infirmity in the judgment of the trial Court and the appeals being devoid of any substance deserve to be dismissed.

20. In the result, the appeals fail and are hereby dismissed.

Sd/-
L.C. BHADOO
Judge

Sd/-
Dhirendra Mishra
Judge